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Case No.: 2:11-cv-00562-RLH-RJJ

## ORDER

(Motion to Dismiss—#6;  
Motion to Enlarge Time  
for Service of Process—#11)

Defendants.

This dispute arises out of alleged injuries Frederick suffered in a slip-and-fall accident while shopping at a Target store on November 25, 2008. Frederick filed suit in the Eighth Judicial District Court for the State of Nevada (“State Court”) on November 24, 2010. (Dkt. # 6, Mot., Ex. A Compl.) The State Court issued a summons on March 18, 2011, but Frederick did not effectuate service until March 25. (*Id.* Ex. B, C.) Target now argues that this Court should dismiss Frederick’s complaint for insufficient service of process. The Court declines to do so.

1 Target contends that the Court should apply state law to the question of whether  
 2 Frederick timely served process and then federal law to determine whether time should be  
 3 extended citing *Nealey v. Transportacion Maritima Mexicana, S.A.*, 662 F.2d 1275, 1279 n.5 (9th  
 4 Cir. 1980). However, the law under either federal or state law is the same practically speaking,  
 5 compare NRCP 4(i) with FRCP 4(m), and the result under either rule would also be the same.

6 Plaintiff has shown sufficient good cause, though just barely, by explaining that he  
 7 had provided a service agent with the necessary documents and ordered rush service a few days  
 8 before the deadline to serve process. The Court is unwilling to dismiss this case, thus subjecting  
 9 Frederick to a statute of limitations defense, because of two days late service of process. *See Efaw*  
 10 *v. Williams*, 473 F.3d 1038, 1041 (9th Cir. 2007) (court's may consider statute of limitations and  
 11 other prejudices when considering granting a Rule 4(m) extension). This is particularly so where  
 12 part of the fault lies with the service agent even though Frederick's counsel should have been more  
 13 diligent. This would be unjust and heavily prejudicial to Frederick. As Frederick has already  
 14 served process, the Court need not set a specific time frame by which it chooses to enlarge time for  
 15 service of process. The Court simply grants the motion to enlarge sufficient to cure the two day  
 16 late service and denies Target's motion to dismiss.

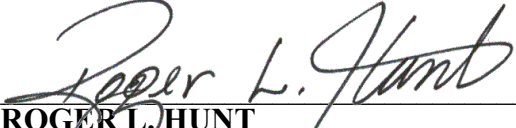
### 17 CONCLUSION

18 Accordingly, and for good cause appearing,

19 IT IS HEREBY ORDERED that Target's Motion to Dismiss (#6) is DENIED.

20 IT IS FURTHER ORDERED that Frederick's Motion to Enlarge Time for Service  
 21 of Process (#11) is GRANTED.

22 Dated: August 22, 2011.

23  
 24   
 25 **ROGER L. HUNT**  
 26 **United States District Judge**